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In re Application of
Ferrandis, et al.
Application No. 10/522,457
Filed: January 21, 2005
Attorney Docket No. 427.094

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: DECISION DISMISSING PETITION
: UNDER 37 CFR 1.78(a)(3)
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This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 8, 2007 and supplemented on August 23, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No.10/470,112, filed July 24, 2003, which is a 371 of PCT/FR02/00691, filed February 27, 2001.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the filing date of nonprovisional Application no. 10/470,112, as provided in the amendment, is incomplete. The amendment filed March 8, 2007 states that U.S. Patent Application Serial No. 10/470,112 was filed on "July 24, 203".

Also, 37 CFR § 1.78(a)(3) requires a statement that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. Since the statement appearing in the petition varies from the required language, the statement is being

construed as the statement required by 37 CFR §1.78(a)(3). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

Before the petition can be granted, petitioner must submit a substitute amendment that lists the desired complete benefit claim, including the correct filing date of Application No. 10/470,112, along with a renewed petition under 37 CFR 1.78(a)(3).¹

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

¹ The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).